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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,662	09/19/2001	Edward G. Tiedemann JR.	PA792C1	1407
23696	7590	09/06/2005	EXAMINER	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			NGUYEN, STEVEN H D	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/955,662	TIEDEMANN ET AL.	
	Examiner	Art Unit	
	Steven HD Nguyen	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 September 2001.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/19/01</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 3 objected to because of the following informalities:

As claim 3, line 3, "claim 1" should be changed to – claim 2 --. Appropriate correction is required.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 2-17 rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 of prior U.S. Patent No. 6,317,435. This is a double patenting rejection.

Regarding claim 2, claim 1 of the patent is identical to claim 2 of the application.

Regarding claim 3, claim 2 of the patent is identical to claim 3 of the application.

Regarding claim 4, claim 3 of the patent is identical to claim 4 of the application.

Regarding claim 5, claim 4 of the patent is identical to claim 5 of the application.

Regarding claim 6, claim 5 of the patent is identical to claim 6 of the application.

Regarding claim 7, claim 6 of the patent is identical to claim 7 of the application.

Regarding claim 8, claim 7 of the patent is identical to claim 8 of the application.

Regarding claim 9, claim 8 of the patent is identical to claim 9 of the application.

Regarding claim 10, claim 9 of the patent is identical to claim 10 of the application.

Regarding claim 11, claim 10 of the patent is identical to claim 11 of the application.

Regarding claim 12, claim 11 of the patent is identical to claim 12 of the application.

Regarding claim 13, claim 12 of the patent is identical to claim 13 of the application.

Regarding claim 14, claim 13 of the patent is identical to claim 14 of the application.

Regarding claim 15, claim 14 of the patent is identical to claim 15 of the application.

Regarding claim 16, claim 15 of the patent is identical to claim 16 of the application.

Regarding claim 17, claim 16 of the patent is identical to claim 17 of the application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 rejected under 35 U.S.C. 102(b) as being anticipated by Hoff (USP 5463626).
Hoff discloses a method for transmitting information from a base station (Fig 1; Ref 10, 18, 20 and 12) to mobile stations (Fig 1, Ref 14 and 22) in a communication system comprising the steps of identifying at least one portion of a time frame within the forward link, the identified portion of the frame having available capacity for transmitting at least a portion of at least one previously unscheduled traffic stream in addition to any traffic streams previously scheduled to be transmitted over the forward link (Col. 3, lines 22-25 discloses identified the available space slots in the forward link and interleaving facsimile message into these available spaces after the portion space slots of forward link assigned to the page messages); and simultaneously

transmitting the previously scheduled traffic streams and the portion of the previously unscheduled traffic stream during the identified portion of the frame (Col 3, lines 22-35 for transmitting the frames wherein each frame divided into the space slots that contain the page message “scheduled traffic stream” and facsimile message “unscheduled traffic stream” to the mobiles).

Response to Arguments

6. Applicant's arguments filed 9/19/01 have been fully considered but they are not persuasive.
7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., transmit the two data types simultaneously during a time slot and simultaneous transmission of both types of data is for using the full transmission power capacity during a time frame) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Feldman (US 6393000) discloses a method and system for transmitting second signal during absence of a first one.

Funghans (US 6259710) discloses a method and system for transmitting control data when the system detects a silent period of voice data.

Olson (US 6317435) discloses a method and system for simultaneously conveying full rate speech data and dedicated user data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven HD Nguyen
Primary Examiner
Art Unit 2665
8/31/05